

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JUNE 11, 2002

AMENDED IN ASSEMBLY APRIL 2, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2166

Introduced by Assembly Member Lowenthal

February 20, 2002

An act to amend Section 25366.5 of, and to add Section 25250.9 to, the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2166, as amended, Lowenthal. Hazardous waste: used oil recycling: transportation: household hazardous waste: liability.

(1) Existing law requires used oil to be managed as a hazardous waste, unless the used oil meets specified requirements. A violation of the laws regulating used oil is a crime.

This bill would require a hazardous waste transporter who transports used oil to ~~annually~~ provide a written acknowledgment to each generator of used oil from whom the transporter receives used oil. The bill would exempt a transporter from this requirement if the used oil will be transported to a specified authorized facility. The bill would provide that a person who makes a material misrepresentation implementing these requirements is in violation of the hazardous waste control laws. Since a violation of the bill's new requirements concerning the transportation of used oil would be a crime, the bill would impose a state-mandated local program.

(2) The existing Carpenter-Presley-Tanner Hazardous Substance Account Act imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and for the priority ranking of hazardous substance release sites for removal or remedial action under the act. The act requires that the costs incurred by the department to carry out the act be recoverable from the liable person. Existing law prohibits a public agency operating a household hazardous waste collection program, a person operating such a program under a written agreement with a public agency, or, a person on operating a certified used oil collection center, from being held liable in such a cost recovery action with regard to *waste* properly handled and transported ~~waste to a treatment or disposal facility~~. Existing law also provides for the apportionment of costs and expenditures under the act and allows a person who has incurred removal or remedial action costs to seek indemnity or contribution from other liable persons.

This bill would additionally prohibit such a public agency or person from being held liable in an action for contribution *and would additionally include, in the immunity provision, any waste that has been transported to a storage facility*. ~~The bill would make a legislative finding and declaration that this change is declaratory of existing law.~~ The bill would also correct obsolete references.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25250.9 is added to the Health and
- 2 Safety Code, to read:
- 3 25250.9. (a) Except as provided in subdivision (b), a
- 4 hazardous waste transporter who transports used oil shall ~~annually~~
- 5 provide a written notification in the form below to each generator
- 6 from whom the transporter receives used oil:
- 7

~~Notification Regarding Potential Shipment of Used Oil to a Facility that Does Not
Meet California Environmental Standards~~

*IMPORTANT NOTICE REGARDING THE DISPOSITION OF YOUR USED OIL:
PLEASE SIGN AFTER READING*

_____ (used oil transporter) hereby advises _____
(used oil generator) that _____ (generator's) shipment of used oil
may be transported to a facility that is required to comply with federal
regulations applicable to management of used oil, but that is not required
to comply with the more stringent requirements applicable to hazardous
waste management facilities. California facilities that handle or process
used oil are required to meet those more stringent requirements, and some
out-of-state facilities that process used oil also meet those requirements.
These include more stringent leak detection and prevention requirements,
engineering certifications of tank integrity, and financial assurances for
closure and accidental releases. It is lawful to send used oil to
out-of-state facilities that comply only with federal used oil management
standards and not these more stringent requirements.

This notification is for information purposes only.

_____ (signed, Transporter) *Date:* _____

_____ (signed, Generator) *Date:* _____

(b) A transporter is not required to provide a generator with the
notification specified in subdivision (a) if either of the following
apply:

(1) The generator from whom the transporter receives used oil
specifically designates in writing that the used oil is to be
transported to a specified facility and that facility either is
authorized by the department to produce used oil into recycled oil
or it is operating in accordance with a hazardous waste facilities
permit or interim status document issued pursuant to the federal
act.

(2) The transporter annually certifies to the generator, in
writing, that any used oil that the transporter receives from the
generator will be transported only to a facility that is authorized by
the department to produce used oil into recycled oil or to a facility

1 that is lawfully operating in accordance with a hazardous waste
2 facilities permit or interim status document issued pursuant to the
3 federal act.

4 (c) *A transporter may make the certification specified in*
5 *subdivision (a) even if the used oil the transporter receives from the*
6 *generator is first transported to a transfer facility, as defined in*
7 *paragraph (3) of subdivision (a) of Section 25123.3, or a storage*
8 *facility authorized by the department to store used oil, before the*
9 *used oil is sent to a facility that is authorized by the department to*
10 *produce used oil into recycled oil or to a facility that is lawfully*
11 *operating in accordance with a hazardous waste facilities permit*
12 *or interim status document issued pursuant to the federal act.*

13 (d) Any person who makes a material misrepresentation in the
14 course of implementing the requirements of this section is in
15 violation of this chapter. A transporter that relies in reasonable
16 good faith upon a statement made by a facility to comply with this
17 section is not in violation of this chapter.

18 ~~(d)~~—

19 (e) Each transporter subject to this section shall retain the
20 documents necessary to demonstrate compliance with this section,
21 including, but not limited to, each signed notification form, for as
22 long as the transporter is required to retain the manifest for the used
23 oil to which the documents apply.

24 ~~(e)~~—

25 (f) This section shall not be construed to prohibit the
26 transportation of used oil to any facility located outside the state,
27 or to impose liability upon, or in any way affect the liability of a
28 generator whose used oil is transported to a facility located outside
29 the state in accordance with the requirements of this section.

30 (g) *A transporter may place the notification and signature and*
31 *date block specified in subdivision (a) on the back of the service*
32 *order the transporter provides to the generator, if the notification*
33 *language and associated signature and date block specified in*
34 *subdivision (a) is the only wording appearing on that side of the*
35 *service order and the transporter and generator sign the signature*
36 *and date block each time the generator receives a service order.*

37 SEC. 2. Section 25366.5 of the Health and Safety Code is
38 amended to read:

39 25366.5. (a) Any public agency operating a household
40 hazardous waste collection ~~facility~~ *program* or any person

operating such a ~~facility~~ *program* under a written agreement with a public agency, or, for material received from the public as used oil, any person operating a certified used oil collection center as provided in Section 48660 of the Public Resources Code, shall not be held liable in any cost recovery action brought pursuant to Section 25360 or in any action for contribution, including, but not limited to, any action to recover the fees imposed by Section 25343, for any waste that has been properly handled and transported to an authorized hazardous waste treatment, *storage*, or disposal facility at a location other than that of the collection program.

(b) For purposes of this section, “household hazardous waste ~~collection facility~~” means a ~~facility, as defined in subdivision (f) of Section 25218.1, at which hazardous~~ *collection program*” means a *program or facility, specified in Section 25218.1, in which* hazardous wastes from households and conditionally exempt small quantity generators, are collected and ultimately transferred to an authorized hazardous waste treatment, storage, or disposal facility.

(c) Except as provided in subdivision (a), this section does not affect or modify the obligations or liabilities of any person imposed pursuant to any state or federal law.

~~SEC. 3. The Legislature finds and declares that the changes made to Section 25366.5 of the Health and Safety Code by Section 2 of this act are declaratory of existing law.~~

~~SEC. 4.—~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.